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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,340	12/04/2003	Dirk Jager	LUD-5793.1 CIP	3224

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NEW YORK, NY 10103-3198

EXAMINER

HALVORSON, MARK

ART UNIT	PAPER NUMBER
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1642

MAIL DATE	DELIVERY MODE
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09/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/729,340

Applicant(s)

JAGER ET AL.

Examiner

Mark Halvorson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 92 and 115 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 92 and 115 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim 13 has been cancelled as being essentially identical to claim 92. SEQ ID NOs: 1, 3, 4, 8, 15, 19, 22 and 26 are nonelected inventions.

Claims 92 and 115 are pending.

This application is in condition for allowance except for the following formal matters:

Objections to Specification maintained

The objection to the claims and specification for having amino acid sequences without a SEQ ID NO: is maintained. Applicant must comply with the sequence rules, 37 CFR 1.821 which states that any peptide sequence with four or more amino acids must be identified with a SEQ ID NO:.

MPEP 2422 Nucleotide and/or Amino Acid Sequence Disclosures in Patent Applications 37 CFR 1.821. Nucleotide and/or amino acid sequence disclosures in patent applications states:

- (a) "amino acid sequences as used in § § 1.821 through 1.825 are interpreted to mean an unbranched sequence of four or more amino acids" (emphasis added)
- (b) Patent applications which contain disclosures of nucleotide and /or amino acid sequences, in accordance with the definition in paragraph (a) of this section, shall, with regard to the manner in which the nucleotide and /or amino acid sequences are presented and described, conform exclusively to the requirements of § § 1.821 through 1.825.
- (c) Patent applications which contain disclosures of nucleotide and /or amino acid sequences must contain, as a separate part of the disclosure, a paper copy disclosing the nucleotide and /or amino acid sequences and associated information using the symbols and format in accordance with the requirements of § § 1.822 and 1.823.(emphasis added)
- (d) Where the description or claims of a patent application discuss a sequence that is set forth in the "Sequence Listing " in accordance with paragraph (c) of this section, reference must be made to the sequence by use of the sequence identifier, preceded by "SEQ ID NO: " in the text of the description or claims, even if the sequence is also

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embedded in the text of the description or claims of the patent application (emphasis added).

As specifically stated by the MPEP 2422 and 37 CFR 1.821, amino acid sequences are defined as four or more residues in a sequence. As defined, amino acid sequences must be disclosed on a paper copy, a corresponding CRF and must be identified by a SEQ ID No.

The instant claims recite at least four unbranched amino acid residues in a specific sequence. By definition, these amino acid sequences are required to be in sequence compliance.

As Applicants have indicated MPEP 2422.03 also indicates that "language such as residues 14-243 of SEQ ID NO:23 is permissible. MPEP 2422.03 has been interpreted to mean that the language, amino acids # - # of SEQ ID NO:#, can be substituted for the actual amino acid subsequence. Thus, Applicants may obviate this rejection by deleting the amino acid sequences and identifying the sequence by language such as "amino acids 158-167 of SEQ ID NO:32". However, it has been interpreted that Applicants may not include an actual sequence in the specification, even if language such as amino acids # - # of SEQ ID NO:# is adjacent to the sequence, unless that sequence is accompanied by its own SEQ ID NO:. Applicants may obviate this objection by deleting the amino acid sequences in the claims and specification and identifying the sequence by language such as "amino acids 158-167 of SEQ ID NO:32". Applicants may also obviate this objection by providing a SEQ ID NO: for all amino acid sequences in the claims and specification.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.


A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halvorson, PhD whose telephone number is (571) 272-6539. The examiner can normally be reached on Monday through Friday from 8:30am to 5 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shanon Foley, can be reached at (571) 272-0898. The fax phone number for this Art Unit is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Halvorson
Patent Examiner
571-272-6539


SHANON FOLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600